

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 17, 2003

IN RE:

**PETITION OF CHATTANOOGA GAS COMPANY,
NASHVILLE GAS COMPANY, A DIVISION OF
PIEDMONT GAS COMPANY, AND UNITED
CITIES GAS COMPANY, A DIVISION OF ATMOS
ENERGY CORPORATION FOR A
DECLARATORY RULING REGARDING THE
COLLECTIBILITY OF THE GAS COST PORTION
OF THE UNCOLLECTIBLE ACCOUNTS UNDER
THE PURCHASE GAS ADJUSTMENT ("PGA")
RULES**

**DOCKET NO.
03-00209**

**ORDER GRANTING IN PART AND DENYING IN PART
THE MOTION FOR PROTECTIVE ORDER**

This matter is before the Pre-Hearing Officer upon the *Motion for Protective Order of the Consumer Advocate and Protection Division of the Office of the Attorney General in Response to Discovery Propounded by Atmos Energy Corporation* (the "*Motion*") filed with the Tennessee Regulatory Authority (the "TRA") on August 29, 2003. In this *Motion*, the Consumer Advocate and Protection Division (the "CAPD") is seeking a limitation on the discovery requested by Atmos Energy Corporation ("Atmos") for the following alleged reasons: (1) the discovery requests were untimely filed at 4:30 PM on July 28, 2003, in contravention of the scheduling orders of the [Pre]-Hearing Officer in this docket and TRA Rule 1220-1-1-.11(1); (2) the requests clearly seek the legal work product of the Consumer Advocate; (3) the request is overly broad and

burdensome; (4) the requests seek information that is confidential and privileged under the attorney-client privilege and the governmental deliberative process privilege; (5) the requests seek information from experts who may not testify at the hearing of this matter; and (6) the requests are not reasonably calculated to lead to discovery of admissible evidence in this matter. For the reasons set forth below, the Pre-Hearing Officer grants in part and denies in part the CAPD's *Motion*.

In its *Response to the Discovery Requests of Atmos* (the "*Response*"), the CAPD objects to each and every request as untimely. According to the TRA's *Notice of Procedural Schedule*, all Discovery Requests were to be filed with the TRA and served on all parties no later than Monday, July 28, 2003. Pursuant to TRA Rule 1220-1-1-.11(1), the requests should have been filed no later than 2:00 p.m. on that day. Atmos' Discovery Requests were not filed until 4:30 p.m. In as much as the Discovery Requests were filed with the TRA only 2.5 hours after the specified deadline and there is no indication at what time the CAPD received its copy of the requests, the CAPD has failed to make any showing of prejudice from the delay, therefore, this general objection to Atmos' Discovery Requests is denied.

Atmos' Discovery Requests Nos. 1, 2, and 3 seek a clarification of the CAPD's legal position on various issues, as well as supporting facts, reasoning, and legal authority. To the extent that these requests seek reasoning and legal authority, the CAPD has substantiated its claim of privilege pursuant to the work-product exception of Tenn. R. Civ. Proc. 26.02(3), which protects against the disclosure of an attorney's mental impressions, conclusions, opinions, or legal theories. To the extent the requests seek

facts supporting the CAPD's legal positions, the CAPD must comply as it has not substantiated its claim that the requests are overly broad and burdensome.¹

IT IS THEREFORE ORDERED THAT:

The CAPD's *Motion* is granted in part and denied in part as stated herein.

A handwritten signature in cursive script, reading "Kim Beals", written over a horizontal line.

Kim Beals, Counsel
as Pre-Hearing Officer

¹ See *Obiajulu v. City of Rochester, Department of Law*, 166 F.R.D. 293, 295 (W.D.N.Y. 1996) (stating that a party resisting discovery must show specifically how each discovery request is unduly burdensome or overly broad).